

# State of Colorado



**Bill Owens**  
*Governor*

**John Zakhem**  
*Board Chair*

**Kristin F. Rozansky**  
*Board Director*

**State Personnel Board**  
633 17<sup>th</sup> Street, Suite 1320  
Denver, Colorado 80202-3604  
Phone (303) 866-3300  
Fax (303) 866-5038

## **AGENDA PUBLIC BOARD MEETING November 15, 2005**

A public meeting of the State Personnel Board will be held on **Tuesday, November 15, 2005, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.** The public meeting will commence at 9:00 a.m.

Reasonable accommodation will be provided **upon request** for persons with disabilities. If you are a person with a disability who requires an accommodation to participate in this meeting, please notify Board staff at 303-866-3300 by November 10, 2005.

### **I. REQUESTS FOR RESIDENCY WAIVERS**

A. November 1, 2005 Report on Residency Waivers

Reports are informational only; no action is required.

### **II. PENDING MATTERS**

There are no pending matters before the Board this month.

### **III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD**

There are no Initial Decisions or Other Final Orders of the Administrative Law Judges or the Director on appeal to the Board this month.

### **IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING**

A. Timothy Bennett v. Department of Corrections, Fort Lyon Correctional Facility, State Personnel Board case number 2005G028.

Complainant, a certified fire life/safety officer at Fort Lyon Correctional Facility, Department of Corrections, petitioned for hearing following a final agency decision denying his grievance of a negative Performance Documentation Form for Reporting a Dangerous Condition. He argues that he reported an unsafe condition to the appropriate persons given his position as life safety coordinator. Following the report, Complainant's supervisor wrote him up for providing this memorandum to others and for violating the

chain of command by not discussing his concerns with his supervisor first. Complainant grieved the write-up and alleges he has been threatened that further reporting of safety and dangerous conditions to others than his supervisor will result in disciplinary action; he is now facing a hostile work environment; and these actions by the Department of Corrections are in violation of the Whistleblower Act, §24-50.5-101, *et seq.* C.R.S.

Respondent argues that Complainant failed to follow the chain of command, failed to timely file his whistleblower complaint, and failed to disclosure the fire and safety information to anyone outside the agency; and, finally, that Respondent did not act arbitrarily or capriciously in writing up Complainant and denying relief at Steps I and II of the grievance process.

On October 31, 2005, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending that Complainant's petition for hearing be denied.

B. Bridget G. Watkins v. Department of Public Health and Environment, Division of Disease Control and Environmental Epidemiology, State Personnel Board case number 2005G078.

Complainant was formerly employed as a probationary Health Professional II by the Department of Public Health and Environment, Division of Disease Control and Epidemiology. She filed a petition for hearing on February 10, 2005, arguing that she was denied relief in a Step II grievance decision and that the final grievance decision was arbitrary and capricious because: 1) Respondent breached its promise to retain Complainant at the same, or substantially the same, pay rate, a promise upon which Complainant relied; 2) Respondent failed to consider all of the evidence and failed to use due diligence in seeking the truth; 3) Respondent abused its discretion in making its decision and otherwise acted improperly; 4) Respondent's decision had no rational basis and no competent evidence to support it; and 5) Respondent's decision was contrary to law/regulation, including, but not limited to Rule 3-1, *et seq.*

Respondent argues that Complainant failed to meet her burden of showing that valid issues exist that merit a full hearing and that the Board should deny Complainant's petition for hearing. Respondent further requests an award of attorney fees and costs.

On September 28, 2005, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending that Complainant's petition for hearing be denied.

C. Frederick J. Beall, Gregory J. Bublitz and Gilbert R. Dickman v. Trustees of the Colorado School of Mines, Colorado School of Mines, State Personnel Board case number 2006G020(C).

Complainants, certified Pipe/Mechanical Trades II, employed by the Colorado School of Mines, filed a petition for hearing on September 19, 2005, arguing that the final grievance decision was arbitrary and capricious because Respondent did not address the inequities in salaries for similarly situated employees.

Respondent argues that Complainants' grievance was untimely, their appeal does not state a claim for which the Board can grant a hearing, and the Board does not have jurisdiction to adjust Complainants' salaries.

On November 2, 2005, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending that Complainants' petition for hearing granted.

- D. William J. Kaberlein v. Department of Labor and Employment, Unemployment Insurance, State Personnel Board case number 2005G096.

Complainant, a certified Labor and Employment Specialist II employed by the Department of Labor and Employment, Division of Training, Office of Unemployment Insurance, filed a petition for hearing on April 29, 2005. Complainant challenges the referral of 31 candidates in a promotional selection process, which ultimately filled seven vacancies for Labor and Employment Specialist III positions within the Department of Labor and Employment, Office of Unemployment Insurance.

Respondent argues the Complainant failed to meet the burden of showing that grounds exist, under Board Rule 8-46B, 4 CCR 801, that merit a full hearing and there is no remedy available to Complainant in this case.

On November 4, 2005, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending the petition for hearing be granted.

- E. Lynn Redden v. Department of Labor and Employment, Unemployment Insurance, State Personnel Board case number 2005G094.

Complainant, a certified Labor and Employment Specialist II employed by the Department of Labor and Employment, Division of Training, Office of Unemployment Insurance, filed a petition for hearing on April 26, 2005, arguing that she was denied relief because no final grievance decision was rendered within thirty days of her submission of her written grievance. Complainant further argues that when the decision was finally rendered, it was arbitrary and capricious because the appointing authority acknowledged that he offered at least one of seven open positions to a candidate who ranked below the twenty-first referral.

Respondent argues the Complainant failed to meet the burden of showing that grounds exist, under Board Rule 8-46B, 4 CCR 801, that merit a full hearing and there is no remedy available to Complainant's in this case.

On November 4, 2005, the Administrative Law Judge issued a Preliminary Recommendation of the Administrative Law Judge recommending the petition for hearing be granted.

## **V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR**

- A. Shelley Burke v. Department of Human Services, State Personnel Board case number 2004B069 (October 24, 2005).

Complainant, a correctional safety and security officer (CSSO), appealed her disciplinary termination, alleging discrimination based on disability and seeking rescission of the termination, reinstatement to a similar position in a different facility, back pay and benefits, and an award of attorney fees and costs. After hearing, the ALJ concluded that Complainant committed none of the acts upon which she was disciplined, Respondent's actions were arbitrary and capricious, as Respondent had no factual basis upon which to discipline Complainant, and the preponderance of evidence demonstrated that Complainant was the best performer on her unit with respect to imposing discipline when appropriate and enforcing regulations designed to protect residents' health and safety. In addition, the ALJ found that Respondent did not discriminate against Complainant on the basis of disability, but did retaliate against Complainant for exercising her free speech

rights. Rescinding the disciplinary termination, the ALJ ordered that Respondent reinstate Complainant to a CSSO position at a different facility, with full back pay and benefits, minus compensation she has earned from other sources after her termination, and reimburse her for attorney fees and other costs incurred in bringing this action.

[The deadline for appealing the Initial Decision of the Administrative Law Judge is November 23, 2005.]

**VI. REVIEW OF THE MINUTES FROM THE OCTOBER 18, 2005 PUBLIC MEETING OF THE STATE PERSONNEL BOARD**

**VII. ACKNOWLEDGMENTS**

**DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS OCTOBER 18, 2005 PUBLIC MEETING:**

- A. David Teigen v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2005G076 (C).

The Board voted to deny Complainant's request for oral argument, to deny Complainant's Petition to the Board to Overturn Administrative Law Judge's Recommended Decision, and to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- B. Mark Schornack v. Department of Human Services, Pueblo Regional Center, State Personnel Board case number 2006G005.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing on the following issues: 1. Did Respondent commit harassment based on gender against Complainant; 2. Did Respondent discriminate against Complainant based on gender in removing him from his Day Program Coordinator position, and did the agency engage in procedural irregularities or violations of law in that removal, thereby demonstrating pretext for intentional discrimination; and 3. In view of the conduct Complainant alleges Weiser engaged in, is Complainant entitled to reinstatement of leave balances taken during stress related leave.

**VIII. REPORT OF THE STATE PERSONNEL DIRECTOR**

**IX. ADMINISTRATIVE MATTERS & COMMENTS**

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Staff Activities
- FY 05 Annual Report of Cases under the State Employee Protection (Whistleblower) Act.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

**X. PROPOSED LEGISLATION AND/OR RULEMAKING**

**XI. EXECUTIVE SESSION**

- A. Case Status Report
- B. Minutes of the October 18, 2005 Executive Session
- C. Other Business

\* \* \*

**NEXT REGULARLY SCHEDULED BOARD MEETINGS - 9:00 a.m.**

<b>December 20, 2005</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>January 17, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>February 21, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>March 21, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>April 18, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>May 16, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>
<b>June 20, 2006</b>	<b>Colorado State Personnel Board 633 17th Street, Suite 1400, Courtroom 1 Denver, CO 80202-3604</b>